

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 488

Introduced by Assembly Member Williams
(Coauthor: Assembly Member Chesbro)

February 19, 2013

An act to add Article 3 (commencing with Section 42450.1) to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 488, as amended, Williams. Recycling: household batteries.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires retailers of rechargeable batteries to have in place a system for the acceptance and collection of rechargeable batteries.

This bill would require, by January 1, 2015, a producer or a household battery stewardship organization ~~created~~ *appointed* by one or more producers of a household battery to submit to the department a household battery stewardship plan, which would be required to include specified elements. The bill would require the department to review a household battery stewardship plan submitted to the department within 30 days after receipt and to approve or disapprove the plan, as specified.

The bill would prohibit a producer, wholesaler, or retailer, on and after ~~April~~ *September* 1, 2015, from selling a household battery unless the plan for that battery is approved by the department. The bill would require a producer or the household battery stewardship organization

to implement the household battery program pursuant to the household battery stewardship plan, including achieving a specified collection rate. The bill would require each producer or household battery stewardship organization implementing a household battery stewardship plan to prepare and submit to the department an annual report describing the activities carried out pursuant to the household battery stewardship plan.

The bill would require a producer or household battery stewardship organization submitting a household battery stewardship plan to pay the department a plan review fee, as determined by the department, when submitting the plan to the department and to pay an administrative fee, as determined by the department, when submitting the annual report. The bill would provide for the imposition of administrative civil penalties upon a wholesaler or retailer selling household batteries in violation of the bill. The bill would create the Household Battery Stewardship Account in the existing Integrated Waste Management Fund and would require that the fees be deposited into that account and that the penalties be deposited into the Household Battery Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the department's program implementation costs and would authorize all funds collected or received by the department under the program, except for the fees, to be expended as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of batteries.

The bill would also allow a producer or organization that is implementing an approved plan and incurring specified costs to bring a civil action to recover costs, damages, and fees from another producer for failure to comply with the bill's provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In early 2006, most household batteries were classified by
- 4 the state as universal waste and prohibited from being disposed of
- 5 in solid waste landfills. Under state law, "household batteries"
- 6 means batteries made of mercury, alkaline, carbon-zinc, and

1 nickel-cadmium, and other batteries typically generated as
2 household waste, including, but not limited to, batteries used in
3 hearing aids, cameras, watches, computers, calculators, flashlights,
4 lanterns, standby and emergency lighting, portable radios,
5 television sets, meters, toys, and clocks, but excluding lead-acid
6 batteries, batteries that are sold in a “covered electronic device,”
7 as defined in Section 42463 of the Public Resources Code, and
8 batteries that are not easily removable or are not intended or
9 designed to be removed from the products, other than by the
10 manufacturer.

11 (b) Effective July 1, 2006, state law prohibits most retailers
12 from selling rechargeable batteries in the state unless they have a
13 system in place for collecting used rechargeable batteries from
14 consumers.

15 (c) Approximately 80 percent of batteries sold in this state are
16 alkaline batteries and are not covered under the retail take-back
17 requirements.

18 (d) Local governments throughout the state are responsible for
19 the collection and management of household batteries, and to
20 manage this hazardous waste, these local governments and
21 taxpayers pay a range of between eight hundred dollars (\$800) per
22 ton to two thousand seven hundred dollars (\$2,700) per ton, or
23 tens of millions of dollars each year.

24 (e) Because other types of recycling programs have proven to
25 have limited success, state and regional governments in Europe
26 and Canada have adopted producer responsibility programs to
27 ~~redirect the responsibility for the end-of-life management of~~
28 ~~discarded hazardous and hard-to-manage products from local~~
29 ~~governments and retailers primarily to producers~~ *distribute*
30 *responsibility for the end-of-life management of discarded*
31 *hazardous or hard-to-manage products among all entities involved*
32 *in the distribution chain.*

33 (f) After many public hearings and discussions, the former
34 California Integrated Waste Management Board adopted an overall
35 Framework for an Extended Producer Responsibility (EPR)
36 guidance document as a policy priority in January 2008.

37 (g) The program established by Article 3 (commencing with
38 Section 42450.1) of Chapter 8 of Part 3 of Division 30 of the Public
39 Resources Code, by Section 2 of this act, is intended to reduce
40 costs to local government, to harmonize the state’s producer

responsibility obligations with other national and international programs, and to enhance the protection of public health and *the* environment through the use, reuse, and end-of-life management of those household batteries.

(h) The plan review fee and the administrative fee imposed pursuant to Section 42450.10 of the Public Resources Code are regulatory fees within the meaning of paragraph (3) of subdivision (b) of Section 3 of Article XIII A of the California Constitution, as the fees are imposed solely for the purpose of recovering the reasonable regulatory costs to the Department of Resources Recycling and Recovery incident to investigating, inspecting, and auditing the fee payer, and the enforcement costs thereof, and with respect to reviewing the household battery stewardship plan, and the annual reports and enforcing Article 3 (commencing with Section 42450.1) of Chapter 8 of Part 3 of Division 30 of the Public Resources Code.

SEC. 2. Article 3 (commencing with Section 42450.1) is added to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, to read:

Article 3. Product Stewardship for Household Batteries

42450.1. For purposes of this article, ~~and unless the context otherwise clearly requires otherwise, the definitions in this article govern the construction of this article:~~ *following terms have the following meanings:*

(a) ~~“Baseline of the number of household batteries collected by all producers subject to the plan” means~~ *“Baseline” means the number of household batteries collected by all producers subject to the plan as a number calculated by weight based on the percentage of household batteries that are collected during a calendar year, as compared to the average number of household batteries that were annually sold in the state by those producers during the previous three calendar years.*

(b) “Brand” means a name, symbol, word, or traceable mark that identifies a household ~~battery, rather than its components,~~ *battery* and attributes the household battery to the owner or licensee of the brand as the producer.

(c) “Collection rate” ~~means a quantitative measure that each program is required to collect by an established date. The collection~~

1 ~~rate shall be calculated by weight and shall distinguish between~~
2 ~~nonrechargeable household batteries and rechargeable household~~
3 ~~batteries, but not by the individual producer of each battery a~~
4 ~~percentage by weight that each program is required to collect by~~
5 ~~an established date.~~

6 (d) “Discarded household battery” means a household battery
7 that has been discarded, as defined in subdivision (b) of Section
8 25124 of the Health and Safety Code.

9 ~~(e) “Distributor” means an entity that sells, offers for sale, or~~
10 ~~makes available for sale in the state one or more unused household~~
11 ~~batteries or one or more unused products incorporating or packaged~~
12 ~~with a household battery and is not the brand owner of the unused~~
13 ~~household batteries or unused products incorporating or packaged~~
14 ~~with one or more household batteries.~~

15 ~~(f) (1) “Household battery” has the same meaning as defined~~
16 ~~in subdivision (e) of Section 42450, but shall not include any of~~
17 ~~the following:~~

18 ~~(e) “Household battery” means a battery weighing two~~
19 ~~kilograms or less made of mercury, alkaline, carbon-zinc, or~~
20 ~~nickel-cadmium, and any other battery typically generated as~~
21 ~~household waste, including, but not limited to, a battery used in~~
22 ~~cameras, watches, calculators, flashlights, lanterns, standby and~~
23 ~~emergency lighting, portable radio and television sets, meters,~~
24 ~~toys, and clocks. “Household battery” does not include any of the~~
25 ~~following:~~

26 ~~(A)~~

27 ~~(1) A battery that is sold in a covered electronic device, as~~
28 ~~defined in Section 42463.~~

29 ~~(B)~~

30 ~~(2) A battery that is not easily removable or is not intended or~~
31 ~~designed to be removed from the product, other than by the~~
32 ~~manufacturer.~~

33 ~~(2) “Household battery” includes both rechargeable and~~
34 ~~nonrechargeable household batteries.~~

35 ~~(3) A battery that is sold in a medical device, as defined in the~~
36 ~~federal Food, Drug, and Cosmetic Act by paragraph (h) of Section~~
37 ~~321 of Title 21 of the United States Code.~~

38 ~~(g)~~

39 (f) “Household battery stewardship organization” or
40 “organization” means an organization appointed by one or more

1 producers pursuant to paragraph (1) of subdivision (b) of Section
2 42450.2 to act as an agent on behalf of the producer to design,
3 submit, and administer a household battery stewardship plan
4 pursuant to this article.

5 ~~(h)~~

6 (g) “Household battery stewardship plan” or “plan” means a
7 plan submitted to the department pursuant to Section 42450.2 by
8 an individual producer or a household battery stewardship
9 organization.

10 ~~(i) “Recycling” means the process of collecting and preparing~~
11 ~~recyclable materials and reusing the materials in their original form~~
12 ~~or using them in manufacturing processes that do not cause the~~
13 ~~destruction of recyclable materials in a manner that precludes~~
14 ~~further use.~~

15 ~~(j) “Nonrechargeable battery” means a battery weighing 2~~
16 ~~kilograms or less that is not designed to be electrically recharged.~~
17 ~~A nonrechargeable battery includes, but is not limited to, alkaline~~
18 ~~manganese, carbon-zinc, lithium, silver oxide, and zinc air batteries.~~

19 ~~(h) “Recycling” has the same meaning as defined in Section~~
20 ~~40180.~~

21 ~~(k)~~

22 (i) “Producer” shall be determined, with regard to a household
23 battery that is sold, offered for sale, or distributed in the state, as
24 meaning one of the following:

25 (1) The person who manufactures the household battery and
26 who sells; *or* offers for sale; ~~or is the distributor of;~~ that household
27 battery in the state under that person’s own name or brand.

28 (2) If there is no person who sells; *or* offers for sale; ~~or is the~~
29 ~~distributor of;~~ the household battery in the state under the person’s
30 own name or brand, the producer of the household battery is the
31 owner or licensee of a trademark or brand under which the
32 household battery is sold or distributed in the state, whether or not
33 the trademark is registered.

34 (3) If there is no person who is a producer of the household
35 battery for purposes of paragraphs (1) and (2), the producer of that
36 household battery is the person who imports the household battery
37 into the state for sale or distribution.

38 ~~(t)~~

39 (j) “Product stewardship” means requiring the producer of a
40 household battery, and all other entities involved in the distribution

1 chain of a household battery, to share in the collection and
2 recycling of the household battery.

3 ~~(m)~~

4 (k) “Program” means the system for the collection,
5 transportation, recycling, and disposal of household batteries
6 implemented pursuant to an approved household battery
7 stewardship plan.

8 ~~(n)~~

9 (l) “Reporting period” means the period commencing January
10 1 and ending on December 31 of the same calendar year.

11 ~~(o)~~

12 (m) “Retailer” means a person that offers new household
13 batteries in a retail sale, as defined in Section 6007 of the Revenue
14 and Taxation Code, including a retail sale at retail through any
15 means, including remote offerings such as sales outlets, catalogs,
16 or an Internet Web site.

17 ~~(p) “Sell” or “sales” means any transfer of title of a household~~
18 ~~battery for consideration, including a remote sale conducted~~
19 ~~through a sale outlet, catalog, or Internet Web site or similar~~
20 ~~electronic means, but does not include a lease.~~

21 ~~(q)~~

22 (n) “Wholesaler” means a person that offers new household
23 batteries for sale in this state in a sale that is not a retail sale, as
24 defined in Section 6007 of the Revenue and Taxation Code, and
25 for which the household battery is intended to be resold.

26 42450.2. (a) On or before January 1, 2015, each producer or
27 the household battery stewardship organization ~~for one or more~~
28 ~~producers of household batteries~~ shall submit a household battery
29 stewardship plan to the department.

30 (b) (1) If one or more producers appoint a household battery
31 stewardship organization to act as an agent on behalf of one or
32 more of those producers, the organization may include producers,
33 and shall also include, at minimum, one voting member from each
34 of the following organizations, with priority given to those based
35 in California:

36 (A) Retailers.

37 (B) Local governments.

38 (C) Public representatives.

39 (D) Haulers.

40 (E) Recyclers.

(2) If the household battery stewardship organization is unable to recruit members from the organizations identified in paragraph (1), the stewardship organization shall provide an explanation to the department in the plan submitted pursuant to this section or the annual report required by Section 42450.9.

(c) (1) Except as provided in paragraph (2), before submitting the household battery stewardship plan to the department, the producer, ~~group of producers~~, or household battery stewardship organization shall consult with stakeholders, including retailers, collectors, recyclers, local government, and customers, during the development of the household battery stewardship plan, and shall solicit stakeholder comments and respond to stakeholder comments. *All stakeholder meetings shall be available using telecommunication.*

(2) If stakeholder involvement is not feasible, the producer, group of producers, or household battery stewardship organization shall provide an explanation to the department in the plan submitted pursuant to this section or the annual report required by Section 42450.9.

(d) Each household battery stewardship plan shall include, at a minimum, all of the following elements:

(1) Contact information for all participating producers.

(2) The collection rate for the household batteries subject to the plan in the following manner, except as provided in Section 42450.3:

(A) A baseline of the number of household batteries collected by all producers subject to the plan, which shall be calculated by weight based on the percentage of household batteries collected during the previous calendar year, as compared to the average number of household batteries that were sold in the state during the previous three calendar years by all producers that are subject to the plan.

(B) If a producer subject to the plan previously collected data to establish a baseline number of household batteries, that baseline number may be used to fulfill the requirement in subparagraph (A), if the data is no more than three years old and the producer submits the data collected and methodology used to calculate that number to the department in the plan.

(C) The program shall achieve an increase in the household battery collection rate of 25 percent, starting at the baseline rate

1 calculated pursuant to subparagraph (A) or (B), for the 2019
2 calendar year.

3 (3) A description of the brands of the household batteries
4 covered by the plan and the baseline of household batteries
5 collected during the previous calendar year, as determined pursuant
6 to subparagraph (A) of paragraph (2).

7 (4) The number and type of convenient collection opportunities
8 provided free of charge for consumers in all counties of the state,
9 the methods by which the discarded household batteries will be
10 collected in all areas in the state, and an explanation of how the
11 collection system will be convenient and adequate to serve the
12 ongoing needs of small businesses and consumers in both urban
13 and rural areas.

14 (5) A description of the method that will be used to recycle the
15 discarded household batteries to ensure that the components of the
16 discarded household batteries, to the extent feasible, are
17 ~~transformed or remanufactured into finished batteries for use~~
18 *recycled or remanufactured into new products*.

19 (6) Roles and responsibilities of key participants in the
20 household battery distribution chain.

21 (7) The outreach procedures that will be used to provide notice
22 of the program to ~~employers~~ *businesses*, local agencies, retailers,
23 wholesalers, and ~~waste~~ haulers.

24 (8) The manner in which existing household battery collection
25 points and other programs can be identified and maximized to
26 achieve the required collection rates.

27 (9) ~~The methods of disposing~~ *for managing* the household
28 batteries collected pursuant to the plan.

29 (10) (A) The financing method selected to sustainably fund the
30 implementation of the plan for achieving the identified collection
31 rates described in the plan.

32 (B) The financing method shall not include a separate and
33 distinct fee at the point of purchase.

34 (11) The planned educational activities to maximize collection
35 rates, including, but not limited to, the use of social media,
36 billboards, print, and radio, and information provided at the point
37 of sale.

38 (12) *A report on the feedback from any stakeholders' meetings*
39 *held pursuant to subdivision (c).*

(e) The producer or household battery stewardship organization may elect to include provisions in the plan for the implementation of the program in conjunction with those cities, counties, districts, and regional agencies, in whose jurisdictions the program will be implemented. If the producer or household battery stewardship organization makes this election, the producer or household battery stewardship organization shall provide one or more of the following to cities, counties, districts, and regional agencies participating in the stewardship program:

(1) Reasonable reimbursement for the mutually agreed upon cost per pound of collected household batteries.

(2) The location, hours, and contact information for the convenient collection points for discarded household batteries that are located within the county where the local agency is located and that are consistent with the plan.

(3) Products for setting up a collection point within that local agency and providing for the pickup of household batteries collected, including, but not limited to, arranging for the disposal of those household batteries.

42450.3. A producer or household battery stewardship organization may petition the department for an adjustment to the collection rate specified in the plan. The department may grant an adjustment to the collection rate only if the department determines there are documented exigent circumstances that are beyond the control of the producer or household battery stewardship organization.

42450.4. (a) On or before 30 days after the date a plan is received pursuant to Section 42450.2, the department shall review the plan to determine whether each plan element has been addressed in the plan and the plan adequately addresses stakeholder comments and oversight concerns. If the department does not approve the plan, the department shall notify the producer or organization that submitted the plan which elements were not adequately addressed, and the producer or organization shall revise and resubmit the plan within 45 days after receiving the notification. If the department approves the plan, the department shall, within ~~45~~ 30 days after receipt, notify the producer or organization that the submitted plan is approved.

(b) The department shall make all household battery stewardship plans submitted to the department pursuant to Section 42450.2

1 available to the public on the department's Internet Web site, *but*
2 *shall not publish information protected under the Uniform Trade*
3 *Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of*
4 *Division 4 of the Civil Code).*

5 (c) A producer or organization shall notify the department 30
6 days before instituting a significant or material change to an
7 approved household battery stewardship plan.

8 (d) On or before ~~September~~ April 1, 2015, and on or before
9 ~~September~~ April 1 annually thereafter, the department shall post
10 on its Internet Web site a listing of the brands of household
11 batteries for which the producer is in compliance with this article
12 and for which the household battery stewardship plan is in
13 compliance with this article, as specified in Section 42450.7.

14 42450.5. On and after, ~~April~~ September 1, 2015, a producer,
15 wholesaler, or retailer shall not offer a household battery for sale
16 in this state or offer a household battery for promotional purposes
17 in this state unless the plan submitted by the producer or household
18 battery stewardship organization of that household battery has
19 been approved by the department pursuant to Section 42450.4.

20 42450.6. Upon receiving notification from the department
21 pursuant to Section 42450.4 that a plan is approved, the producer
22 or the household battery stewardship organization shall do all of
23 the following:

24 (a) Implement the plan, including, but not limited to, achieving
25 the collection rate specified in the plan.

26 ~~(b) Pay the administrative fees imposed pursuant to subdivision~~
27 ~~(b) of Section 42450.10.~~

28 ~~(e)~~

29 (b) Submit the annual report required by Section 42450.9.

30 ~~(d)~~

31 (c) (1) If a producer or household battery stewardship
32 organization elects to implement the plan in conjunction with cities,
33 counties, districts, and regional agencies pursuant to subdivision
34 (e) of Section 42450.2, the producer or organization shall take the
35 actions specified in subdivision (e) of Section 42450.2.

36 (2) A local agency that elects to participate in the program shall
37 separate from any other materials the household batteries ~~made~~
38 ~~available~~ for collection by the producer or household battery
39 stewardship organization.

1 42450.7. A household battery stewardship program shall be
2 considered in compliance with this article if it achieves the
3 collection rate for household batteries covered by the plan, as
4 required by paragraph (2) of subdivision (d) of Section 42450.2.

5 42450.8. (a) A wholesaler or a retailer that distributes or sells
6 household batteries shall monitor the department's Internet Web
7 site to determine if the sale of a producer's household batteries is
8 ~~not prohibited by~~ *approved pursuant to* Section 42450.5.

9 (b) A retailer shall have 90 days from the date ~~a noncompliant~~
10 ~~brand is posted on the department's Internet Web site to sell the~~
11 ~~remaining stock of those noncompliant household batteries or to~~
12 ~~remove the product from sale. An enforcement action shall not be~~
13 ~~taken against a retailer pursuant to this article with regard to that~~
14 ~~noncompliant brand~~ *the list of approved brands is posted on the*
15 *department's Internet Web site pursuant to subdivision (d) of*
16 *Section 42450.4 to sell the remaining stock of those household*
17 *batteries that are not approved or to remove the product from sale.*
18 *An enforcement action shall not be taken against a retailer*
19 *pursuant to this article with regard to brands that are not approved*
20 *until after that 90-day period has expired.*

21 42450.9. (a) On or before April 1, 2015, and every ~~subsequent~~
22 year thereafter, each producer or household battery stewardship
23 organization implementing a plan shall prepare and submit to the
24 department an annual report describing the activities carried out
25 pursuant to the plan during the previous calendar year. The annual
26 report shall include, but is not limited to, all of the following
27 elements:

28 (1) The weight of household batteries collected by the program
29 in the prior year and the collection rate achieved in the prior year.

30 (2) A report of the estimated total sales data by weight for
31 household batteries sold in the state for the previous three calendar
32 years.

33 (3) A report on the feedback from a stakeholders' meeting,
34 hosted by producers, that was made available through
35 telecommunication, prior to submittal of the annual report.

36 (4) ~~Independently audited financial~~ *Financial* statements that
37 detail the financing of the plan.

38 (5) Locations, hours, and contact information for all collection
39 points set up by the producers covered by the plan.

1 (6) Examples and description of educational materials used to
2 increase collection.

3 (7) The manner in which the collected household batteries were
4 ~~disposed of and~~ recycled.

5 (b) The department shall review an annual report by doing all
6 of the following:

7 (1) For the 2019 calendar year, if the report is submitted for that
8 year, ~~and~~ or for each year thereafter, the department shall certify
9 that the collection points listed in the annual report are located in
10 every county and serve the ongoing needs of small businesses and
11 consumers in both urban and rural areas, as specified in paragraph
12 (4) of subdivision (d) of Section 42450.2.

13 (2) Review sales and collection data provided for the state to
14 verify collection rates.

15 (3) Verify that all annual report elements specified in subdivision
16 (a) have been addressed in the report.

17 (c) If the department does not act on a report within 45 days of
18 receipt, the report shall be deemed to be approved.

19 (d) The department shall make all reports submitted to the
20 department pursuant to this section available to the public on the
21 department's Internet Web site, *but shall not publish information*
22 *protected under the Uniform Trade Secrets Act (Title 5*
23 *commencing with Section 3426) of Part 1 of Division 4 of the*
24 *Civil Code).*

25 (e) If the collection rate for the household batteries subject to
26 the plan meets the collection rate specified in subparagraph (C) of
27 paragraph (2) of subdivision (d) of Section 42450.2, the report
28 shall be submitted once every two years.

29 (f) *The department may audit any information provided in the*
30 *annual report.*

31 42450.10. (a) (1) A producer or household battery stewardship
32 organization that submits a household battery stewardship plan to
33 the department shall pay a plan review fee to the department
34 pursuant to this subdivision.

35 (2) The department shall set the plan review fee at an amount
36 so that the total amount of plan review fees received by the
37 department is no more than necessary to cover the reasonable costs
38 of reviewing and enforcing the plan. The department may establish
39 a variable plan review fee based on relevant factors, including, but
40 not limited to, the proportion of household batteries produced by

1 the feepayer as compared to the total amount of batteries produced
2 by all producers or household battery stewardship organizations
3 submitting a household battery stewardship plan. The department
4 shall establish the fee so that the manner in which the fee is
5 allocated bears a fair and reasonable relationship to the
6 department's costs in reviewing a plan.

7 (3) The fee shall be due to the department upon submittal of the
8 plan.

9 (b) (1) A producer or household battery stewardship
10 organization required to submit an annual report pursuant to this
11 article shall pay an annual administrative fee to the department
12 pursuant to this subdivision.

13 (2) The department shall set the annual administrative fee in an
14 amount that is no more than necessary to cover the reasonable
15 costs of reviewing annual reports and enforcing this article. The
16 department may establish a variable annual administrative fee
17 based on relevant factors, including, but not limited to, the
18 proportion of household batteries produced by the feepayer, as
19 compared to the total amount of household batteries produced by
20 all producers or household battery stewardship organizations
21 submitting an annual report, and whether the producer is submitting
22 a plan every two years as specified in subdivision (e) of Section
23 42450.9. The department shall establish the fee so that the manner
24 in which the fee is allocated bears a fair and reasonable relationship
25 to the department's costs in reviewing the annual reports and
26 enforcing this article.

27 (3) The fee shall be due to the department upon submittal of the
28 annual report.

29 (c) The total amount of fees collected pursuant to this section
30 shall not exceed the amount necessary to recover costs incurred
31 by the department in connection with the administration and
32 enforcement of the requirements of this article.

33 42450.11. (a) The Household Battery Stewardship Account
34 and the Household Battery Stewardship Penalty Subaccount are
35 hereby established in the Integrated Waste Management Fund.

36 (b) All fees collected pursuant to this article shall be deposited
37 in the Household Battery Stewardship Account and may be
38 expended by the department, upon appropriation by the Legislature,
39 to cover the department's costs to implement this article.

1 (c) All penalties collected pursuant to this article shall be
2 deposited in the Household Battery Stewardship Penalty
3 Subaccount and may be expended by the department, upon
4 appropriation by the Legislature, to cover the department's costs
5 to implement this article.

6 (d) All funds that are collected or received by the department
7 pursuant to this article, other than the fees specified in subdivision
8 (b), may be expended as incentives to enhance reuse, recyclability,
9 and redesign efforts and to reduce environmental and safety impacts
10 of household batteries.

11 42450.13. (a) The department may impose an administrative
12 civil penalty not to exceed one thousand dollars (\$1,000) per day
13 against a wholesaler or retailer that violates Section 42450.5.

14 (b) A wholesaler or retailer that removes from sale any
15 household battery within 90 days of discovery that it is not in
16 compliance with this article shall not be deemed to be in violation
17 of Section 42450.5.

18 (c) Prior to ~~enforcing~~ *issuing* any penalty pursuant to this
19 section, the department shall issue a compliance order to the
20 wholesaler or retailer selling the household battery that allows 30
21 days from the date of the compliance order to cease sales of the
22 household battery.

23 42450.14. (a) A producer or *household battery stewardship*
24 organization that implements a plan in compliance with this article
25 and incurs costs in excess of five thousand dollars (\$5,000) in
26 collecting, handling, *or* recycling, ~~or properly disposing of~~
27 household batteries sold or offered for sale in the ~~state~~, *state* may
28 bring a civil action to recover costs, damages, and fees, as specified
29 in subdivision (c), from another producer for failure to comply
30 with this article, if that producer can be identified from a brand or
31 marking on a discarded household battery or from other
32 information.

33 (b) An action under this section may be brought against one or
34 more producers who are not in compliance with this article, except
35 an action shall not be commenced under either of the following
36 circumstances:

37 (1) No earlier than 60 days after a written notice of the
38 organization's or producer's intention to file an action has been
39 provided to the department and to the producer who is alleged to
40 be noncompliant.

1 (2) If the department has commenced an enforcement action
2 against the producer who is alleged to be noncompliant and is
3 diligently pursuing that action.

4 (c) In an action under this section, the plaintiff may recover
5 from a producer who has been found to be noncompliant all of the
6 following:

7 (1) The costs the plaintiff incurred in collecting, handling,
8 recycling, or properly disposing of household batteries reasonably
9 identified as having originated from the noncompliant producer.

10 (2) An amount of damages equal to no more than three times
11 those costs specified in paragraph (1).

12 (3) The plaintiff's attorney's fees and costs of bringing the
13 action.

14 ~~(d) An action to recover the costs specified in this section may~~
15 ~~be brought in any court in the state, without regard to the amount~~
16 ~~in dispute.~~

17 ~~(e) An action to recover the costs specified in this section may~~
18 ~~be brought in any court in the state, without regard to the amount~~
19 ~~in dispute.~~

20 42450.16. This article does not limit, supersede, duplicate, or
21 otherwise conflict with the authority of the Department of Toxic
22 Substances Control under Section 25257.1 of the Health and Safety
23 Code to fully implement Article 14 (commencing with Section
24 25251) of Chapter 6.5 of Division 20 of the Health and Safety
25 Code, including the authority of the department to include
26 household batteries in its household battery registry.

27 42450.17. (a) Except as provided in subdivision (b), an action
28 taken to increase the recycling of household batteries pursuant to
29 this article by a producer or household battery stewardship
30 organization that affects the types or quantities being recycled or
31 the cost and structure of any return program is not a violation of
32 either the Cartwright Act (Chapter 2 (commencing with Section
33 16700) of Part 2 of Division 7 of the Business and Professions
34 Code), or the Unfair Practices Act (Chapter 4 (commencing with
35 Section 17000), of Part 2 of Division 7 of the Business and
36 Professions Code).

37 (b) Subdivision (a) shall not apply to any agreement establishing
38 or affecting the price of household batteries or the output or
39 production of household batteries, or any agreement restricting

- 1 the geographic area in which, or customers to whom, household
- 2 batteries will be sold.

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